

The Honorable James L. Robart

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MICROSOFT CORPORATION, a Washington
corporation,

Plaintiff,

v.

MOTOROLA, INC., and MOTOROLA
MOBILITY LLC, and GENERAL
INSTRUMENT CORPORATION,

Defendants.

CASE NO. C10-1823-JLR

DEFENDANTS' MOTION TO FILE
DOCUMENTS UNDER SEAL IN
SUPPORT OF MOTOROLA'S MOTION
IN LIMINE

**NOTE ON MOTION CALENDAR:
Friday, August 9, 2013**

I. INTRODUCTION

Pursuant to Western District of Washington Civil Local Rule CR 5(g)(2), Defendants Motorola, Inc. (now Motorola Solutions, Inc.), Motorola Mobility, LLC, and General Instrument Corporation (collectively "Motorola") respectfully move this Court for leave to file under seal the following:

1. Defendants' Motion in Limine.
2. Exhibit B to the Declaration of Andrea Pallios Roberts in Support of Defendants' Motion in Limine.

DEFENDANTS' MOTION TO FILE DOCUMENTS
UNDER SEAL IN SUPPORT OF MOTOROLA'S MOTION
IN LIMINE - 1
CASE NO. C10-1823-JLR

SUMMIT LAW GROUP PLLC
315 FIFTH AVENUE SOUTH, SUITE 1000
SEATTLE, WASHINGTON 98104-2682
Telephone: (206) 676-7000
Fax: (206) 676-7001

1 **II. CERTIFICATION**

2 In accordance with Local Civil Rule 5(g)(3)(A), the undersigned counsel certifies that on
3 July 29, 2013 Shane Cramer (on behalf of Microsoft) and Brain Cannon and Elanor Mangin (on
4 behalf of Motorola) met and conferred, both telephonically and via email, regarding the need and
5 extent to file under seal certain limited portions of Defendants' Motion in Limine and supporting
6 exhibit.

7 **III. BACKGROUND**

8 Microsoft Corporation ("Microsoft") and Motorola entered into a stipulated Protective
9 Order, which was approved by the Court on July 21, 2011. (Dkt. No. 72.) This Protective Order
10 outlines categories of material that should be maintained in confidence, along with procedures for
11 sealing confidential material when included in documents filed with the Court. Specifically,
12 paragraph 1 specifies that:

13 Confidential Business Information is information which has not been made public
14 and which concerns or relates to the trade secrets ... amount or source of any
15 income, profits, losses, or expenditures of any person, firm, partnership,
16 corporation, or other organization, the disclosure of which information is likely to
have the effect of causing substantial harm to the competitive position of the
person, firm, partnership, corporation, or other organization from which the
information was obtained....

17 *Id.* at 1-2. This information should be marked as "CONFIDENTIAL BUSINESS
18 INFORMATION, SUBJECT TO PROTECTIVE ORDER." *Id.* at 2. Additionally, paragraph 6
19 specifies that:

20 (1) Confidential Business Information pertaining to licensing or other
21 commercially sensitive financial information shall not be made available under
22 this paragraph 6 to such designated in-house counsel; the supplier shall designate
23 such Confidential Business Information pertaining to licensing or other
24 commercially sensitive financial information as "[SUPPLIER'S NAME]
CONFIDENTIAL FINANCIAL INFORMATION – OUTSIDE ATTORNEYS'
EYES ONLY – SUBJECT TO PROTECTIVE ORDER" and promptly provide a
redacted version of such document that may be disseminated to the two in-house
counsel designated under this paragraph 6....

25 *Id.* at 4. Finally, Paragraph 2 of the Protective Order governs the sealing of documents, and states
26 in relevant part that:

During the pre-trial phase of this action, such information, whether submitted in writing or in oral testimony, shall be disclosed only *in camera* before the Court and shall be filed only under seal, pursuant to Rule 5(g) of the Local Civil Rules of the United States District Court for the Western District of Washington.

Id. at 2.

Thus, the Protective Order provides that Motorola may request to seal documents by formal motion pursuant to Rule 5(g) of the Local Civil Rules of the Western District of Washington. Local Rule Rule 5(g)(3) states that:

(3) A motion to seal a document, even if it is a stipulated motion, must include the following:

(A) a certification that the party has met and conferred with all other parties in an attempt to reach agreement on the need to file the document under seal, to minimize the amount of material filed under seal, and to explore redaction and other alternatives to filing under seal; this certification must list the date, manner, and participants of the conference;

(B) a specific statement of the applicable legal standard and the reasons for keeping a document under seal, with evidentiary support from declarations where necessary.

Where parties have entered a litigation agreement or stipulated protective order (*see* LCR 26(c)(2)) governing the exchange in discovery of documents that a party deems confidential, a party wishing to file a confidential document it obtained from another party in discovery may file a motion to seal but need not satisfy subpart (3)(B) above. Instead, the party who designated the document confidential must satisfy subpart (3)(B) in its response to the motion to seal or in a stipulated motion.

Similarly, federal law recognizes that courts should protect trade secrets or other confidential commercial information by reasonable means, permitting the filing under seal of documents containing such information. *See* Fed. R. Civ. P. 26(c)(1)(G) and (H) (stating that a court may require that (1) “a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a specified way” and (2) “the parties simultaneously file specified documents or information in sealed envelopes...”).

1 Though courts recognize a general right to inspect and copy public records and documents,
 2 including judicial records, the United States Supreme Court has stated that this right is limited.
 3 “[T]he right to inspect and copy judicial records is not absolute. Every court has supervisory
 4 power over its own records and files, and access has been denied where court files might have
 5 become a vehicle for improper purposes.” *Nixon v. Warner Commc’ns, Inc.*, 435 U.S. 589, 598
 6 (1978). In discussing examples of improper purposes, the Court indicated that courts are not to
 7 serve as “sources of business information that might harm a litigant’s competitive standing.” *Id.*

8 As the Ninth Circuit stated:

9 The law, however, gives district courts broad latitude to grant protective orders to
 10 prevent disclosure of materials for many types of information, including, but not
 11 limited to, trade secrets or other confidential research, development, or
 12 commercial information. See Fed. R. Civ. P. 26(c)(7). Rule 26(c) authorizes the
 13 district court to issue “any order which justice requires to protect a party or
 person from annoyance, embarrassment, oppression, or undue burden.” The
 Supreme Court has interpreted this language as conferring “broad discretion on
 the trial court to decide when a protective order is appropriate and what degree of
 protection is required.” *Seattle Times Co. v. Rhinehart*, 467 U.S. 20, 36 (1984).

14 *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1211 (9th Cir. 2002).

15 **IV. THE PROTECTIVE ORDER BOTH PERMITS AND REQUIRES MOTOROLA**
 16 **TO FILE THIS MOTION FOR LEAVE TO SEAL**

17 In accordance with the Protective Order and the above-referenced authority, Motorola
 18 moves to file the documents described below under seal.

19 Defendants’ Motion in Limine includes summaries of deposition testimony that Motorola
 20 designated as “HIGHLY CONFIDENTIAL – ATTORNEYS’ EYES ONLY” and
 21 “CONFIDENTIAL BUSINESS INFORMATION.” This document should accordingly be sealed.

22 Exhibit B to the Declaration of Andrea Pallios Roberts in Support of Defendants’ Motion
 23 in Limine is excerpts of the deposition of Gregory Leonard. Motorola designated this testimony
 24 as “HIGHLY CONFIDENTIAL.” This document should accordingly be sealed.

V. CONCLUSION

For the foregoing reasons, Motorola respectfully requests that this Court order that the following document be filed under seal:

1. Defendants' Motion in Limine
2. Exhibit B to the Declaration of Andrea Pallios Roberts in Support of Defendants' Motion in Limine

DATED this 29th day of July, 2013.

Respectfully submitted,

SUMMIT LAW GROUP PLLC

By /s/ Ralph H. Palumbo

By /s/ Philip S. McCune

Ralph H. Palumbo, WSBA #04751

Philip S. McCune, WSBA #21081

ralphp@summitlaw.com

philm@summitlaw.com

By /s/ Thomas V. Miller

Thomas V. Miller

MOTOROLA MOBILITY LLC

600 North U.S. Highway 45

Libertyville, IL 60048-1286

(847) 523-2162

And by

Kathleen M. Sullivan (*pro hac vice*)

Quinn Emanuel Urquhart & Sullivan, LLP

51 Madison Avenue, 22nd Floor

New York, NY 10010

(212) 849-7000

kathleensullivan@quinnemanuel.com

Brian C. Cannon (*pro hac vice*)
Andrea Pallios Roberts (*pro hac vice*)
Quinn Emanuel Urquhart & Sullivan, LLP
555 Twin Dolphin Drive, 5th Floor
Redwood Shores, CA 94065
(640) 801-5000
briancannon@quinnemanuel.com
andreaproberts@quinnemanuel.com

William C. Price (*pro hac vice*)
Quinn Emanuel Urquhart & Sullivan, LLP
865 S. Figueroa St., 10th Floor
Los Angeles, CA 90017
(213) 443-3000
williamprice@quinnemanuel.com

Jesse J. Jenner (*pro hac vice*)
Steven Pepe (*pro hac vice*)
Kevin J. Post (*pro hac vice*)
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036-8704
(212) 596-9046
jesse.jenner@ropesgray.com
steven.pepe@ropesgray.com
kevin.post@ropesgray.com

James R. Batchelder (*pro hac vice*)
Norman H. Beamer (*pro hac vice*)
Ropes & Gray LLP
1900 University Avenue, 6th Floor
East Palo Alto, CA 94303-2284
(650) 617-4030
james.batchelder@ropesgray.com
norman.beamer@ropesgray.com

Paul M. Schoenhard (*pro hac vice*)
Ropes & Gray LLP
One Metro Center
700 12th Street NW, Suite 900
Washington, DC 20005-3948
(202) 508-4693
paul.schoenhard@ropesgray.com

***Attorneys for Motorola Solutions, Inc.,
Motorola Mobility LLC and General
Instrument Corp.***

CERTIFICATE OF SERVICE

I hereby certify that on this day I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the following:

Arthur W. Harrigan, Jr., Esq.
Christopher T. Wion, Esq.
Shane P. Cramer, Esq.
Calfo Harrigan Leyh & Eakes LLP
arthurh@calfoharrigan.com
chrisw@calfoharrigan.com
shanec@calfoharrigan.com

Richard A. Cederroth, Esq.
Brian R. Nester, Esq.
David T. Pritikin, Esq.
Douglas I. Lewis, Esq.
John W. McBride, Esq.
David Greenfield, Esq.
William H. Baumgartner, Jr., Esq.
David C. Giardina, Esq.
Carter G. Phillips, Esq.
Constantine L. Trela, Jr., Esq.
Ellen S. Robbins, Esq.
Nathaniel C. Love, Esq.
Sidley Austin LLP
rcederroth@sidley.com
bnester@sidley.com
dpritikin@sidley.com
dilewis@sidley.com
jwmcbride@sidley.com
david.greenfield@sidley.com
wbaumgartner@sidley.com
dgiardina@sidley.com
cphillips@sidley.com
ctrela@sidley.com
erobbins@sidley.com
nlove@sidley.com

T. Andrew Culbert, Esq.
David E. Killough, Esq.
Microsoft Corp.
andycu@microsoft.com
davkill@microsoft.com

DATED this 29th day of July, 2013.

/s/ Marcia A. Ripley

Marcia A. Ripley